



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



John E. Roberts
PO Box 417
Chocorua, NH 03817

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 02-039**

October 17, 2002

I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to John E. Roberts, pursuant to RSA 482-B and Env-C 616. The Division is proposing that fines totaling **\$1,600** be imposed against John E. Roberts for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. John E. Roberts is an individual having a mailing address of PO Box 417, Chocorua, NH 03817.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. RSA 482-B regulates water well contractors and pump installers and establishes the NH Water Well Board ("Board"). Pursuant to rulemaking authority conferred by RSA 482-B:4, the Board has adopted rules to implement this regulatory program (We 100 to 1000, "Water Well Rules"). Under RSA 482-B:8 and :16, the Department of Environmental Services ("DES") has concurrent authority with the Board to enforce RSA 482-B and the Water Well Rules.
2. RSA 482-B:16, II authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 for each offense for violations of RSA 482-B or of any rule adopted or license issued under that statute. Pursuant to rulemaking authority contained therein, the Commissioner has adopted Env-C 616 to establish the schedule of fines for such violations.
3. On May 23, 2002, DES personnel observed John E. Roberts constructing a shallow dug well at the Woodland Toys Store located on Rte 25, South Tamworth, NH.
4. RSA 482-B:5 requires a person to obtain a water well contractor license and a pump installer license before engaging in the business of constructing a well or installing a pump.

5. John E. Roberts is not a licensed water well contractor in the State of New Hampshire
6. John E. Roberts filed a water well contractor license application with the Board on June 5, 2002 and failed to take the written exam on June 13, 2002 and September 12, 2002 after receiving notice from the Board.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

1. John E. Roberts violated RSA 482-B:5 by engaging in the business of well construction without first having obtained a water well contractor license.
2. For the violation identified above, Env-C 616.02(a) specifies a fine of \$2,000

The total fine being sought by the division is \$2,000.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than November 14, 2002, using the enclosed form as follows:

If you plan to attend the hearing, please have an authorized representative sign the appearance (upper portion) and return it to the DES Legal Unit, at the address as noted on the form.

- 2 If you choose to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
- 3 If you wish to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate your interest in settling.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If you wish to have a hearing but are unable to send an authorized representative to the hearing as scheduled, you must notify the DES Legal Unit at least one week in advance of the hearing and request that the hearing be rescheduled. If you do not notify the DES Legal Unit in advance and do not have an authorized representative attend the hearing, the hearing will be conducted anyway in accordance with Env-C 204.09.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules.

Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violation(s) and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- * Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case: The violation was a one-time or non-continuing violation, **and** you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** you did not benefit financially, whether directly or indirectly, from the violation.
 - 1. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
 - 2. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
 - 3. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.


IMPORTANT NOTICE

An administrative fine hearing that is scheduled is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show that you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

If you wish to have an informal meeting to discuss the issues, you must contact the DES Legal Unit at (603) 271-6072 to request a prehearing conference.

* * * * *

Information regarding this proposed fine may be made available to the public via DES's Web page (www.state.nh.us/des). If you have any questions about this matter, please contact the DES Legal Unit, at (603) 271-6072.


COPY
Harry T. Stewart, P.E., Director
Water Division

Enclosure (*NHDES Fact Sheet #CO-2 2002*)

Certified Mail/RRR #7000 0600 0023 9936 5305

cc: Water Well Board
Anthony P. Giunta, P.G., Administrator, WSEB
Gretchen C. Rule, DES Legal Unit
Anne Edwards, Esq. - AGO
Jennifer J. Patterson, Esq. - AGO
Harrison Mackey, Licensing Coordinator
DES PIP Office
(all w/out enclosure)

***** RETURN THIS PAGE ONLY *****

JOHN E. ROBERTS IS REQUIRED BY LAW TO RESPOND TO THIS NOTICE.

PLEASE RESPOND NO LATER THAN NOVEMBER 18, 2002

Please check the appropriate line and fill in the requested information below.

APPEARANCE On behalf of John E. Roberts,

I request to have a formal hearing scheduled in this matter.

I request to have a pre-hearing conference scheduled in this matter.

I would like to meet informally to discuss the issues in this matter.

WAIVER OF HEARING On behalf of John E. Roberts,

I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$1,600 paid to "Treasurer, State of New Hampshire" is enclosed.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY TO:

**Department of Environmental Services
Legal Unit
6 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095**

If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order